



November 23, 1999

Ms. Anne M. Constantine
Legal Counsel
Dallas/Fort Worth International Airport
Post Office Drawer 619428
DFW Airport, Texas 75261-9428

OR99-3376

Dear Ms. Constantine:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129678.

The Dallas/Fort Worth International Airport (the "airport") received a request for all of the requestor's grievance records. You have released some of the requested information to the requestor. You contend that the remaining requested information is excepted from public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The airport has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The airport must meet both prongs of this test for information to be excepted under section 552.103(a).

The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

You inform this office that an employee has filed a complaint with the Equal Employment

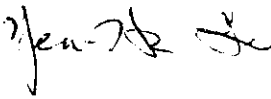
Opportunity Commission ("EEOC") alleging race and age discrimination. This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). Based on your arguments and the information before us, we conclude that you have shown that litigation is reasonably anticipated. Furthermore, we find that the requested information relates to the anticipated litigation. Thus, except for the information discussed below, you may withhold the requested information pursuant to section 552.103(a).

However, we note that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information and such information must be disclosed. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We note that the submitted information includes notices of open meetings. For compelling reasons of public policy, a notice of an open meeting cannot be withheld from disclosure regardless of its relationship to litigation. Open Records Decision No. 551 (1990). Section 552.103, the "litigation exception," cannot be applied to except from disclosure the official records of the public proceedings of a governmental body. Open Records Decision No. 221 (1979). Information that a statute other than chapter 552 of the Government Code expressly makes public is not subject to the exceptions to required public disclosure. Open Records Decision No. 623 at 3 (1994). The notices of open meetings are public records pursuant to the Open Meetings Act. Gov't Code § 551.041. Thus, you must release the notices of open meetings.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in dark ink, appearing to read "Yen-Ha Le", with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/ljp

Ref.: ID# 129678

Encl. Submitted documents

cc: Mr. Richard E. Gillespie
9514 E. County Road 2140
Kerens, Texas 75144
(w/o enclosures)